

**SHERILL J. CRITH**  
Claimant

**STATE OF KANSAS**  
Respondent

**STATE SELF INSURANCE FUND**  
Insurance Carrier

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## ORDER

## ISSUES

- (1) Whether the Administrative Law Judge incorrectly ruled on the application of “certain defenses” under K.S.A. 1997 Supp. 44-551.
- (2) Whether the Administrative Law Judge erred in holding that the “going and coming” rule precluded compensation for claimant’s injuries.

After reviewing the entire record, the Appeals Board finds, for preliminary hearing purposes, as follows:

Claimant, an employee of the State of Kansas, worked in the Landon State Office Building in the 900 block of Jackson Street as a janitor. On the morning of January 27, 1998, claimant was proceeding from her rented parking stall in the Judicial Center parking lot to her work location in the Landon State Office Building. However, rather than

proceeding to the stoplight at Tenth and Jackson, claimant elected to jaywalk across Jackson Street between Tenth and Eleventh where she was struck by a motor vehicle and injured. When asked why she crossed the street at that location, claimant testified that she was going to the Kwik Shop at the corner of Tenth and Jackson in order to buy a newspaper. Claimant had not yet arrived at her work station, was not on respondent's premises, and was not being paid at the time of injury.

Claimant argues the issue of "certain defenses" applies as part of the "going and coming" rule in this matter. However, the defenses raised by respondent fall under the heading of the "going and coming" exception to the restrictions set forth in K.S.A. 1997 Supp. 44-508 regarding what constitutes "arising out of and in the course of employment." The Appeals Board has held on several occasions that the "certain defenses" definition is a separate issue which goes to the compensability of the claim. Examples used in the past have been a willful failure to use a guard or the intoxication defense. In this instance, the dispute appears more to center upon whether claimant suffered accidental injury arising out of and in the course of her employment and whether the "going and coming" exception to this rule under K.S.A. 44-508(f) would apply in this circumstance.

Both claimant and respondent cite Chapman v. Beech Aircraft Corp., 258 Kan. 653, 907 P.2d 828 (1995), as controlling. In Chapman, claimant parked in the Beech parking lot on one side of Central, a busy street in Wichita, Kansas. Claimant was obligated to proceed from the Beech parking lot to the Beech plant, which is located on the other side of Central. While crossing the street, claimant was struck and injured by a motor vehicle. The Court, in Chapman, held that claimant had to cross Central at some point in order to proceed from the parking lot to the plant where claimant worked. In Chapman, it was also found that only individuals dealing with Beech would be crossing Central at that particular location. The Court felt that the fact that Central carried traffic to other destinations was irrelevant. It was the pedestrian traffic crossing Central at that particular location from the Beech parking lot to the Beech facility that was significant.

Three elements considered pertinent in Chapman are whether the route taken is the only route available, whether the route involves a special risk or hazard, and whether the route is one not used by the public except in dealings with the employer.

In this instance, claimant acknowledges there are other routes which she could have followed, safer than the one she chose. Claimant was aware of the traffic light at Tenth and Jackson but elected to not use that light, as a more direct path to her goal, the newspaper at the Kwik Shop, was to jaywalk across Jackson Street between Tenth and Eleventh. Therefore, the first element of Chapman has not been met.

Additionally, the risk or hazard faced by claimant was no different than that faced by other persons in Topeka, Kansas, crossing Jackson Street between Tenth and Eleventh. This would not constitute a special risk or hazard associated with claimant's employment.

Finally, the route chosen by claimant was one used by people dealing, not only with the State of Kansas, but also with the Kwik Shop and several other businesses located in that area.

The Appeals Board, therefore, finds that the Order by Administrative Law Judge Bryce D. Benedict, dated October 16, 1998, denying claimant benefits for having failed to prove accidental injury arising out of and in the course of her employment, should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bryce D. Benedict, dated October 16, 1998, should be, and hereby is, affirmed, and claimant, Sherrill J. Crith, is denied benefits for the accidental injury occurring on January 27, 1998.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1998.

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BOARD MEMBER

c: Ami S. Hyten, Topeka, KS  
Marcia L. Yates, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director